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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/325,819	06/04/99	YAMAMORI	M 85765-000000
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EXAMINER

GRUNBERG, A

ART UNIT

PAPER NUMBER

1661

DATE MAILED:

02/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/325,819

Applicant(s)

Makoto Yamamori

Examiner

Anne Marie Grunberg

Group Art Unit

1661



☒ Responsive to communication(s) filed on Dec 6, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-15 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-15 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

☒ Restriction Election Transmission sheet

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

The previous restriction is withdrawn in favor of this new restriction.

Please Note: In an effort to enhance communication with our customers and reduce processing time, Group 1600 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-308-4315. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-5, drawn to starch, classified in class 426, subclass 578, for example.
 - II. Claims 6-10, drawn to wheat flour, classified in class, 426, subclass 622, for example.
 - III. Claims 11-15, drawn to a wheat plant, classified in class 800, subclass 320.3, for example.

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The inventions are distinct, each from the other because:

Inventions I is unrelated to Invention II and III. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the inventions have different functions where Group I is drawn to starch, Group II is drawn to wheat flour with a high amylose content, and whereas Group III is drawn to a wheat plant. Starch is a white odorless tasteless granular or powdery complex carbohydrate ($C_6H_{10}O_5$)_x that is an important foodstuff, is used in adhesives, laundering, pharmacy and medicine. Starches may have different properties due to the length and branching of the carbohydrate, but this is based solely processing manipulations. As a result, it is very different from flour, because flour has different properties depending on the characteristics of the starting endosperm. Flour contains starch as well as fats, proteins, and minerals, because flour is a soft white powder made from the endosperm of certain cereal grains, notably wheat. There are many different types of wheat flour depending on the type of wheat plant grown and depending on post harvest handling of wheat. For instance, soft red winter wheat flour lends itself very well to sponge cakes, whereas hard white wheat makes excellent bread flour, and durum wheat makes good pasta flour, based on differences of the endosperms involved. However, soft red winter wheat would not make very good bread flour due to the different properties and components of the flour, especially the α -amylase content, and likewise, durum wheat would not make a good sponge cake flour. Flour may also differ depending on moisture content of the grain and germination

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condition of the grain. As a result, differences in flour are mainly due to differences in genotype and environmental by genotype interactions whereas differences in starch are due to processing manipulations and conditions. A wheat plant is unrelated to either of the above, since wheat may be grown for forage, green manure, erosion control, or animal feed, not requiring either starch or flour to be made.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and by their recognized divergent subject matter and because the searches required for Groups I, II and III are distinct from each other, restriction for examination purposes as indicated is proper.

Applicants are advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

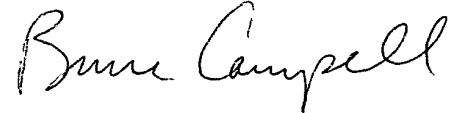
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne Marie Grünberg whose telephone number is (703) 305-0805. The

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examiner can normally be reached Monday through Thursday from 6:30 a.m. to 4:00 p.m. and alternate Fridays from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax phone number for this group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

A handwritten signature in cursive script that reads "Bruce Campell".

**BRUCE R. CAMPELL, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600**

AMG